

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



In the Matter of)
)
)

Distribution of the)
2010 Cable Royalty Funds)
)

Docket No. 2012-4 CRBCD 2010

**MOTION OF PHASE I CLAIMANTS
FOR PARTIAL DISTRIBUTION**

The undersigned representatives of all the Phase I claimant categories to which Section 111 cable royalties have been allocated in prior cable distribution proceedings ("Phase I Parties") submit the following motion to the Copyright Royalty Judges ("Judges") for partial distribution of 50% of the 2010 cable royalty funds (the "2010 Funds").

The Phase I Parties respectfully request that the Judges distribute the 2010 Funds by no later than September 30, 2012. According to the Licensing Division of the Copyright Office (the "Office"), as of March 31, 2012, the amount of the 2010 Funds available for distribution totals approximately \$198,983,903.55. Based on this amount, a 50% partial distribution would approximate \$99,491,951.78. The circumstances warrant a partial distribution of 50% of the 2010 Funds as soon as possible.

I. The Copyright Royalty Judges Have Authority to Order Precontroversy Partial Distributions.

Section 111 of the Copyright Act favors the early distribution of cable royalties. See 17 U.S.C. § 111(d)(4)(C). Chapter 8 of the Copyright Act vests the Judges with ample statutory authority to order the precontroversy distribution of cable royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify

that a partial distribution of royalties could be made at any time after the filing of claims. Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111 . . . may, upon motion of one or more of the claimants and after publication in the *Federal Register* of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C). The statutorily prescribed deadline for filing claims for the 2010 Funds has passed. Furthermore, the Phase I Parties (1) agree to the partial distribution; (2) agree that the requested funds are available for distribution; (3) agree to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution; and (4) agree to file such an agreement with the Copyright Royalty Judges or as otherwise directed.

II. Distribution of 50% of the 2010 Funds is Warranted.

The Judges have consistently granted the Phase I Parties' requests for 50% distributions of the annual cable and satellite royalty funds, including last year's partial distribution of the 2009 cable and satellite royalty funds. *See, e.g.*, Order in Docket No. 2011-7 CRB 2009 CD (October 13, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2009 cable royalty funds); Order in Docket No. 2011-8 CRB 2009 SD (October 13, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2009 satellite royalty funds). *See also* Order in Docket No. 2010-6 CRB 2008 CD (January 11, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2008 cable royalty funds); Order in Docket No. 2010-7 CRB 2008 SD (January 11, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2008 satellite funds).

A partial distribution of the 2010 Funds would ensure that Phase I Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.*, Order in Docket Nos. 94 CARP (92-CD & 93-CD) at 2 & 5 (September 26, 1994) ("September 26, 1994 Order") (Office distributed 80% of the 1992 and 1993 cable royalties, noting that "the intent of the law favored early distribution"); *see also* Order in Docket No. 94 CARP (92-CD & 93-CD) at 2 (September 12, 1994) ("September 12, 1994 Order") (referring to the "overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions"). Accordingly, pre-proceeding distributions of cable royalties under Section 111(d)(4)(C) may be made in circumstances where there may be a significant delay between the filing of claims and the initiation of proceedings. *See, e.g.*, September 12, 1994

Order at 2; September 26, 1994 Order at 2; *see also* Order in Docket No. 2007-3 CRB CD 2004-2005 (Apr. 10, 2008) at 3-4.

Here, the Phase I Parties are seeking distribution of cable royalties that were deposited nearly two years ago. A distribution of at least 50% of the 2010 Funds would ensure that the Phase I Parties are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. The Phase I Parties have agreed to the amount of the proposed partial distribution. Furthermore, the Phase I Parties believe that the undistributed amount and the parties' commitment to repay any excess funds would be sufficient to satisfy all claims and proceedings.

Finally, the Phase I Parties request that the percentage share of the 2010 Funds distributed to each Phase I Party be in the same relative proportions of the average awards that the respective Phase I Parties received in the 2004-2005 Cable Royalty Distribution Proceeding, as announced in the Judges' Final Distribution Order of July 21, 2010, *In the Matter of Distribution of 2004 and 2005 Cable Royalty Funds*, 75 Fed. Reg. 57063 (Sept. 17, 2010). The relative percentage shares of all the Phase I Parties are set forth in Attachment A.¹

CONCLUSION

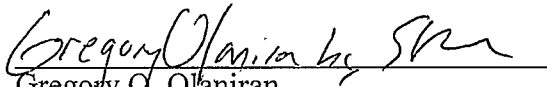
For the reasons set forth above, the Phase I Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the *Federal Register* the proposed partial distribution of 50% of the cable royalties contained in the 2010 Funds, and, thereafter,

¹ This motion does not reflect agreement among the Phase I Parties that the final 2010 cable royalty distributions should be based on the awards made in the 2004-2005 proceeding or agreement by all the Parties with the awards made by the Copyright Royalty Judges in the 2004-2005 proceeding. Each Phase I Party reserves the right to seek shares of the 2010 Funds for itself and for other parties that differ from those awarded in the 2004-2005 proceeding. In addition, the Phase I Parties do not concede through this motion that a 50% distribution is the maximum partial distribution of cable or satellite royalties that should be made for any given year.

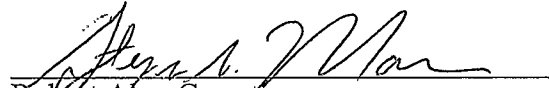
grant the Motion and order a 50% partial distribution of the 2010 Funds by no later than September 30, 2012.

Respectfully submitted,

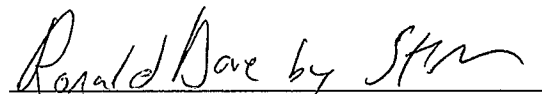
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Dated: June 20, 2012

ATTACHMENT A

CABLE ROYALTY DISTRIBUTION 2004-2005 BLENDED PERCENTAGES¹

A partial distribution of 50% of the 2010 Funds should be distributed in the following percentages: NPR should first receive 0.18% of the entire amount to be distributed after which the remaining amount should be distributed as follows:

<u>CLAIMANT GROUP</u>	<u>ROYALTY FUND</u>		
	<u>BASIC</u>	<u>3.75</u>	<u>SYNDEX</u>
Program Suppliers	33.7%	36.8%	96.2%
Joint Sports Claimants	33.8%	36.9%	0.0%
U.S. Commercial Television (NAB)	16.1%	17.5%	0.0%
Public Television	7.3%	0.0%	0.0%
Music Claimants	3.8%	3.8%	3.8%
Devotional Claimants	3.4%	3.7%	0.0%
Canadian Claimants	1.9%	1.3%	0.0%

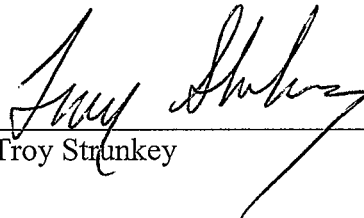
¹ These percentages have been adjusted consistent with the Copyright Royalty Judges' Order for the final distribution of 2004-2005 cable royalties. See Order, *In the Matter of Distribution of the 2004 and 2005 Cable Royalty Funds*, Dkt. No. 2007-3 CRB CD 2004-2005 (July 21, 2010), 75 Fed. Reg. 57063 (Sept. 17, 2010).

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2012, a copy of the foregoing Motion of Phase I Claimants for Partial Distribution of the 2010 Cable Royalty Funds was sent by Federal Express to the individuals listed below:

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